

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
J.N.J. SALES AND SERVICES, INC. )

For Review of a Requirement to )  
Submit a Solid Waste Assessment )  
Test (SWAT) Proposal and Report )  
of the California Regional )  
Water Quality Control Board, )  
Los Angeles Region. Our File )  
No. A-505. )

ORDER NO. WQ 88-8

BY THE BOARD:

On September 9, 1987, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) notified J.N.J. Sales and Services, Inc. (hereinafter J.N.J.) that it must submit a Solid Waste Assessment Test (SWAT) Proposal and Report pursuant to Water Code Section 13273. On October 8, 1987, the State Water Resources Control Board received a timely petition for review from the Petitioner.<sup>1</sup>

I. BACKGROUND

J.N.J. Sales and Services, Inc. (hereinafter J.N.J.) was authorized to operate a 75-acre site located in Ventura County as a landfill on which oil field wastes were deposited. Its activities began in 1954 and continued until the end of 1981. J.N.J. filed a closure plan with the Regional Board on May 19,

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<sup>1</sup> The Petitioner also requested a stay of the Regional Board's actions. Since this order addresses the merits of the petition, we need not act on the stay request.

1982. The land was owned by the McGrath family, which entered into a license agreement with J.N.J. to operate the landfill. On January 13, 1984, the McGrath family sold its interest in the site to Sand Hills Ranch, the current owner.

The 75-acre site is divided by a road into two parcels, one 40 acres and the other 35 acres in size. In 1954, the Regional Board issued Waste Discharge Requirements (Order No. 54-162) which applied to the entire 75-acre site. According to J.N.J., although authorized to do so, it never actually deposited or permitted the deposit of any wastes on the 35-acre parcel. Another entity, Parker-Martin, Inc. operated the 35-acre site. J.N.J. acknowledges that it used the 40-acre parcel for oil waste dumping continuously from 1954 through 1981. In 1969, Ventura County issued Conditional Use Permits (CUP's) for each of the parcels. CUP-306 was issued to J.N.J. for the continued operation of the 40-acre parcel and CUP-3058 was issued to Parker-Martin for the continued operation of the 35-acre parcel.

Parker-Martin went bankrupt in 1971, and CUP-3058 was reissued to Carney & Sons Landfill, Inc., which took over operating the 35-acre parcel. In 1974, both CUP's were extended by the County until 1980. In 1979, the Regional Board revised the 1954 Waste Discharge Requirements and reissued one for each site. Order No. 79-49 was issued for J.N.J.'s 40-acre parcel and 79-48 was issued for Carney's 35-acre parcel.

In a letter dated October 15, 1979, Jack T. Jamar, President and owner of J.N.J. informed the Regional Board that

J.N.J. had taken over the operation of the Carney landfill as of June 16, 1979. The Ventura County Planning Commission in 1981 completed an EIR which revealed the presence of heavy metals at both locations. As a result of these findings the Commission revised its use permits, imposing new and additional requirements. Apparently because of additional liability and expense resulting from the more stringent requirements, J.N.J. decided against accepting the permits, and instead, closed down the operation. In January, 1982, the Regional Board notified J.N.J. that it must file a final closure report.

Water Code Section 13273 became effective January 1, 1985 requiring the State Board to rank all solid waste facilities located in the State based on their threat to water quality. Each year the top rank is required to submit a solid waste water quality assessment report to the appropriate Regional Board. The purpose of this report is to determine whether any hazardous waste has leached from the sites. The J.N.J. and the Carney parcels were placed in Rank 2. On November 20, 1986, the Regional Board originally notified J.N.J. that it must file a SWAT Proposal by April 1, 1987 and a Report by July 1, 1988--both pursuant to Section 13273. In response to this request, J.N.J. submitted its closure plan of May, 1982. By letter dated September 9, 1987, the Regional Board advised J.N.J. that the closure plan was insufficient to comply with Section 13273 and set a new deadline of October 8, 1987 for submission of a SWAT proposal. J.N.J. thereupon filed the present petition.

## II. CONTENTIONS AND FINDINGS

1. Contention: The major contention raised by J.N.J.'s petition is that it is not responsible for responding to the SWAT requirements. Petitioner asserts that the Regional Board's acceptance of its closure plan on May 27, 1982 constitutes a binding representation to JNJ that its legal obligations concerning the landfill are terminated. Petitioner argues that principles of waiver, estoppel, and accord and satisfaction each independently bar the Regional Board from enforcing the SWAT requirements as to J.N.J. We disagree.

Finding: Our finding as to each of the Petitioner's theories is discussed in turn.

a. Waiver.

Petitioner correctly points out that under California law, a waiver is defined as "the intentional relinquishment of a known right or such conduct as warrants an inference of the relinquishment of such right and may result from an express agreement or be inferred from circumstances indicating an intent to waive." Bastanchury v. Times-Mirror Co. (1945) 68 Cal.App.2d 217, 240, 156 P.2d 488; Jones v. Sunset Oil Co. (1953) 118 Cal.App.2d 668, 673. Petitioner asserts that by accepting the May, 1982 closure plan, the Regional Board relinquished its right to now require a SWAT proposal. Petitioner's argument is without merit. The SWAT legislation did not become effective until January 1, 1985--more than two years after J.N.J. had filed

its closure plan. Thus, the Regional Board did not have a known right to waive. Further, California Civil Code Section 3513 provides, in part, that "... a law established for a public reason cannot be contravened by a private agreement." Assuming, arguendo, that the Regional Board's acceptance of the J.N.J. closure plan in 1982 could somehow be deemed a private agreement, the "agreement" would be ineffective to waive the operation of Section 13273, which is clearly a statute established for a public reason.

b. Estoppel. J.N.J. asserts that its reliance on the Regional Board's acceptance of the closure plan, which contains the statement:

"[t]he owners have not advised J.N.J., Inc. about their future plans. The owners will be responsible for their property after closure is completed,"

estops the Regional Board from enforcing the SWAT requirements. However, estoppel is not available to defeat the effect of a statute which has been adopted for the protection of the public. Strong v. County of Santa Cruz (1975) 15 Cal.3d 720, 125 Cal.Rptr. 896; Longshore v. County of Ventura (1979) 25 Cal.3d 14, 157 Cal.Rptr 706. Water Code Section 13273 mandates testing and reporting requirements involving landfills with the purpose of discovering water contamination. As such, it constitutes a legislative directive of overriding force for the protection of the public not subject to estoppel.

c. Accord and Satisfaction

Petitioner contends that the Regional Board's acceptance of the closure report constitutes an accord and satisfaction of any obligations owed by J.N.J. Accord and satisfaction is the substitution of a new agreement in satisfaction of a preexisting agreement between the same parties. 12 Cal.Jur.3rd, p. 289. It is available as a defense between contracting parties if certain requisites are met. Petitioner lists those as including proper subject matter, competent parties, and consent or meeting of the minds. Dunlap v. Bellah (1960) 184 Cal.App.2d 579, 7 Cal.Rptr. 766. It is not necessary to consider whether these requisites are present in this case because the absence of the threshold element of contracting parties is dispositive. Petitioner misconceives the relationship between itself and the Regional Board. The two are not parties to a "contract", as Petitioner's argument implies. Rather, the Regional Board is a regulatory government agency authorized to administer certain laws. It acts according to the letter of the law--not in response to any supposed act of "consideration" on Petitioner's part. The Regional Board is authorized to require a SWAT plan from Petitioner under Water Code Section 13273. Petitioner's compliance with that requirement is compliance with the law--it cannot properly be conceived as an accord replacing any "contract" between the Regional Board and the Petitioner. Therefore, because there was no contract between the Regional Board and Petitioner, there could be no accord and satisfaction.

2. Contention: Next, Petitioner contends that there has been "unequal enforcement of statutory provisions" in that it knows of other landfill operators who have not been required to meet the same obligations under the SWAT legislation that have been imposed upon J.N.J. Petitioner claims that these other unnamed landfills owned by the same landowner have not been closed in accordance with state-approved closure plans and it is "unaware of any Regional Board Orders directing them to conduct testing of their sites."

Finding: Water Code Section 13273 requires the State Board to rank all solid waste disposal sites in the State. SWAT proposals and reports from the sites are due according to placement on the ranking list. Petitioner has provided no information about the names of the other landfills or about whether they have been properly ranked. It is conceivable that the other sites are on a lower rank and that the deadline for their SWAT proposal has not yet arrived. While it may be useful for the Regional Board to investigate this matter to determine the identification of those other sites and to assure that they are in compliance with applicable laws, including Section 13273, this argument does not in any way absolve Petitioner of its obligations under that provision.

3. Contention: Petitioner asserts that it is a violation of its due process rights to require further testing and reporting even after it has already prepared and submitted the closure plan.

Finding: The argument is that Section 13273 is a retroactive enactment imposing requirements exceeding those in effect when J.N.J. filed its closure plan, in violation of J.N.J.'s due process rights under the United States Constitution. This argument is an attack on the constitutionality of Section 13273. As we have stated in the past this Board will not review arguments that a statute which it implements is constitutionally infirm. California Constitution Article 3, Section 3.5. See Board Order Nos. W.Q. 86-13, p. 4; 85-10, p. 5.

4. Contention: Petitioner contends that the Regional Board should have given J.N.J. a screening questionnaire option under Health and Safety Code Section 41805.5(b). According to Petitioner, this is a jurisdictional prerequisite to imposing the SWAT proposal requirement. The Regional Board's failure to offer J.N.J. this option, according to Petitioner, is a waiver of its right to require the SWAT proposal and report. Alternatively, according to Petitioner, the Regional Board is estopped from requiring a SWAT report.

Finding: Actually, Health and Safety Code Section 41805.5(b) has no bearing on the operation of Section 13273. The former provision applies only to air quality assessments--not to water quality. Moreover, the Regional Board is not authorized to enforce the Health and Safety provision. A similar provision found in the Water Code, Section 13273.1, effectively provides an available exemption from the SWAT requirements if the Regional Board finds, based on the

questionnaire that the site does not have hazardous substances that will impact the beneficial uses of water. However, the provision applies only to facilities 50,000 cubic yards or smaller (Section 13273.1(b)) and which are on Rank 3 or later (Section 13273.1(f)). This provision would not apply to J.N.J. because it exceeds the size limitation and is a Rank 2 site.

5. Contention: Petitioner contends that it never operated the 35-acre parcel known as the Carney landfill, and therefore, it should not be required to provide a SWAT report for that portion of the facility.

Finding: In its petition, J.N.J. asserts that it only performed mitigation work on the Carney site and did not operate it as a landfill, even though it was authorized to do so. Despite this claim, however, the record contains persuasive information demonstrating that J.N.J. "operated" the Carney site within the meaning of Water Code Section 13273.3. This Section provides:

"As used in Sections 13273, 13273.1, and 13273.2, "operator" means a person who operates or manages, or who has operated or managed, the solid waste disposal site. If the operator of the solid waste disposal site no longer exists, or is unable, as determined by the regional board, to comply with the requirements of Section 13273, 13273.1, or 13273.2, 'operator' means any person who owns or who has owned the solid waste disposal site."

A September 12, 1979 letter to the Regional Board from J.N.J. signed by Norma J. Jamar declares that:

"All wastes hauled to CUP # 306 [J.N.J.'s 40-acre site] and CUP #3058 [the Carney site] are

being disposed of as specified in the board's requirements."

Later, on October 15, 1979, Jack T. Jamar sent a letter to the Regional Board in which he asserts that:

"J.N.J. has taken over the operation of Carney and Son, as of June 17, 1979. Both sites are now operated by J.N.J., Inc."

Finally, on January 29, 1980, Norma J. Jamar sent another letter to the Regional Board, confirming that:

"As of June 16, 1979 J.N.J. Sales and Service Inc., took over operations of both sites. CRWQCB was notified of such change."

These three documents clearly support the conclusion that J.N.J. operated and was responsible for the Carney site.

6. Contention: Petitioner finally asserts that it cannot comply with the Regional Board's directive because its license agreement with the McGrath family has ended and that it no longer has access to the property in order to conduct the testing.

Finding: In its response to the petition, Sand Hills Ranch, the current owner of the property, states its willingness to admit J.N.J. in order to conduct the tests.

### III. CONCLUSIONS

1. J.N.J. is an "operator" of both the 40-acre and the 35-acre parcels, known respectively, as J.N.J. Landfill and Carney Landfill, within the meaning of Water Code Section 13273.3.

2. The Regional Board acted properly in requiring submission by J.N.J. of a SWAT Proposal and Report as to both sites pursuant to Water Code Section 13273.

IV. ORDER

The Petition is hereby dismissed.

CERTIFICATION

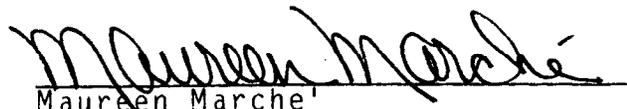
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 21, , 1988.

AYE: W. Don Maughan  
Darlene E. Ruiz  
Edwin H. Finster

NO: None

ABSENT: Eliseo M. Samaniego  
Danny Walsh

ABSTAIN: None



Maureen Marche  
Administrative Assistant to the Board

